IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:05.01.2007

CORAM:

THE HON'BLE MR. JUSTICE P. SATHASIVAM
AND
THE HON'BLE MR. JUSTICE S. TAMILVANAN

W.P.No.18868 OF 1997

The Tamilnadu Village Health
Nurses' Association (Reg.No.13/93)
Rep. By its Secretary K. Gomathi
Having its Office at:
20/2 Engineer Subbaraya Mudali Street
Vellore. .. Petitioner

vs.

1.The State of Tamilnadu
Rep. By its Secretary
Department of Health & Family Welfare
Fort St. George, Chennai 600 009.

2.The Director of Public Health &
Preventive Medicine
DMS Complex, Teynampet
Chennai 600 006.

3.The Superintendent of Police
Tiruvarur District.

4.Dr.P. Elangovan

5.Feminist Association for Social Action
a Society registered under the
Tamil Nadu Societies Registration Act,
1975, rep. By its Secretary.

6.V. Geetha
Coordinator, Tamizhaga Pengal Orunginaipu Iyakam
No.4, Rangan Street, T.Nagar, Chennai 17.

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7.Penn Urimai Iyakkam
a Society registered under the Societies
Act, rep.by its Secretary.

(R.5 to R.7 were impleaded as respondents
5 to 7, as per the order of this Court
dated 03.09.2003 made in WPMP.Nos.2545,
2715 and 3960 of 1998). .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Mandamus as stated therein.

For petitioner : Mr. Vasudevan

For respondents : Mr. M. Sekar
1 to 3 Special Government Pleader

Mr. S. Vijayakumar for R.4.

Ms. D. Geetha for R.6.

Ms. Geetha Ramaseshan for R.7.

No appearance for R.5.

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ORDER

(Order of the Court was made by P. SATHASIVAM,J.)

The Tamil Nadu Village Health Nurses' Association through its Secretary filed the above writ petition to issue a writ of Mandamus directing the respondents 1 to 3 to take appropriate action against the 4th respondent- Dr.P.Elangovan, with regard to the sexual harassment in the work place by following the directions of the Supreme Court in Vishaka and Others v. State of Rajasthan and Others [(1997) 6 SCC 241].

2. The case of the petitioner Association as briefly stated is hereunder:

(a) The deponent is the District Secretary of the petitioner Association. The petitioner Association was formed in the year 1987 and registered in 1993 to represent the grievances and other needs of the village Health Nurses throughout Tamil Nadu. Right from the beginning, the Nurses at Kadugoor village in Ariyalur taluk have been facing sexual harassment and abuse from Dr.P.Elangovan, Medical Officer at Poyyur Sub-Primary Health Centre, 4th respondent herein. The Kadugoor Primary Health Centre had four sub-centres at Poyyur, Sankarudi, Vilangudi and Manakkal. The review meetings were to be

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held at Ariyalur Panchayat Union Office on last Tuesday of every month. The 4th respondent, Dr.P.Elangovan made the Village Health Nurses to stand throughout the meetings and also wrapped their knuckles and screwed ears for minor mistakes and he used to poke into their hips and waists.

(b) On 29.7.1997, during one of the meetings the Village Health Nurses were asked to demonstrate the fundus test to locate the position of a 12 week foetus of a pregnant woman. He ordered one Shantha (Sector Health Nurse – in short, 'SHN') who was pregnant to demonstrate the fundus test in front of male orderlies and others. All the men present began to dark and make fun of the above SHNs. for the predicament faced by them. As the said demonstration would necessitate them to disrobe to present the naked limbs to the gaze of all persons, they refused to do so and began to cry.

(c) On 30.7.1997, a written complaint of the above said harassment by the 4th respondent, Dr.P.Elangovan was prepared, signed by 12 Village Health Nurses and submitted to the Perambalur District Deputy Director of Medical Services and a copy was marked to the Association. On 1.8.1997, when the Village Health Nurses, Parameswari, Rajeswari and Suseela were waiting at Ariyalur Bus Stand, one Chellamuthu who is known to Dr.P.Elangovan allegedly threatened them with physical harm unless they withdrew the complaint. Becoming fearful for the safety of their lives, the Village Health Nurses sent fax message to the Hon'ble Chief Minister of Tamil Nadu seeking protection. They also informed their immediate superiors about the threat to their lives. As the superiors refused to extend any protection, the said Village Health Nurses, Parameswari, Rajeswari and Suseela made complaint to Ariyalur Police on 2.8.1997. They were again threatened by the said Chellamuthu when they came out of the Police Station. First information report was registered in Crime No.267 of 1997 on the file of Ariyalur Police Station under sections 341, 352 and 506(II) IPC.

(d) The said Dr.P.Elangovan also used to take away the leave salary by telling the Nurses that they are not entitled to the same since they are on medical leave for certain days and thereby make them sign the registers by force, but he never used to show the credit side that the money was returned and pocketed the entire money. In one particular case, he summoned one Primary Health Centre Nurse, by name, Shantha while she was on field work and insisted that since it became late, she could sleep in his clinic itself for which she replied that she had relatives and left the place. He used to use abusive words referring to women nurses. In the year 1996-97, he withheld Rs.500/- from the above said Nurse which was a portion of pongal Bonus for which he gave no explanation. In 1994, he sold Polio Drops for Rs.60/- to Village Health Nurses. When he insisted to remove the nurse strip and show him the foetal position in 12

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week pregnant woman, she broke down. He also insisted that she should act-out the delivery process. He used to collect money for filling up petrol to his vehicle and was never in the habit of returning the same. On 28.8.1997, the said Shantha received a letter from another Nurse stating that the said Medical Officer had arranged some persons to strip of her saree and that she should be careful about the same. Due to this timely warning she made arrangements not to go to the area and thus saved herself from the situation. He also made the Nurses to palpate by stripping of sarees. In this regard, complaints were given to the Director of Public Health, 2nd respondent herein on 19.9.1997 and 18.10.1997.

(e) Even though all the affected Village Health Nurses reported the matter to their immediate superiors, no enquiry was conducted and hence, all the Village Health Nurses demonstrated before the Regional Director's Office at Ariyalur on 11.8.1997. Though an enquiry was ordered against Dr.P.Elangovan, nothing was fruitful. No action was taken against Dr.P.Elangovan, but the affected Village Health Nurses were punished for their complaints. The failure of the Department of Public Health and Preventive Medicine to take necessary steps to safeguard the work environment of Village Health Nurses and to protect their fundamental rights and also to take action against Dr.P.Elangovan is contrary to the mandate of the Supreme Court in Vishaka case. Further, the so-called enquiry/enquiries conducted by the official respondents have not resulted in any action against the 4th respondent, not fulfilling the complaint mechanism as set out by the Supreme Court in Vishaka case. The Department has also done nothing to prevent such harassment made by the said Medical Officer. In those circumstances, having no other remedy, the Association has filed the above writ petition highlighting the grievances of their members.

3. The Special Secretary to Government, Health and Family Welfare Department, Madras filed a counter affidavit on behalf of respondents 1 to 3, wherein it is stated that pursuant to the representations of Village Health Nurses working in Health Sub Centres, Ariyalur taluk, an enquiry was conducted by the Additional Director of Public Health and Preventive Medicines on 12.8.1997 and 13.8.1997 with the Doctors and staff members of Kadugur, Poyyur, Manakal, Sundakudi and Vilankudi Primary Health Centres. It was decided that Dr.P.Elangovan could be released to Director of Medical and Rural Health Services side and disciplinary action should be initiated against him after receipt of enquiry report.

4. The Deputy Director of Health Services also conducted an enquiry on 1.8.1997. In the enquiry report, the Deputy Director stated that on various dates fixed for enquiry, the Village Health Nurses neither attended the enquiry, nor came forward to submit their written statements regarding the sexual harassment, but, instead,

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they went on agitation and hence, he could not proceed further with the enquiry. Thereafter, Tamil Nadu Village Health Nurses Association submitted a representation dated 8.12.1997 to the Director of Public Health and Preventive Medicine requesting him to take action against Dr.P.Elangovan for his sexual harassment against the Village Health Nurses. Their demand was considered by the Government in G.O.(Rt.) No.1764, Health and Family Welfare Department dated 23.12.1997 by which an Enquiry Committee was constituted with a direction to submit a report before the end of December, 1997. Even after the constitution of the Enquiry Committee, the Village Health Nurses did not participate in the enquiry conducted on 8.1.1998, 9.1.1998 and 23.1.1998. Meanwhile, the petitioner filed miscellaneous petition in W.M.P.No.2287 of 1998 and obtained an order of stay of further proceedings of the enquiry.

5. The Committee constituted by the Government consists of four members including one Chairperson and all the four members are women. The 4th member Dr.Kausalya Devi is from Non-Governmental Organisation viz., one of the Trustees of Gandhigram Rural Institute, Dindigul District. Inasmuch as the allegation relating to sexual harassment has been referred to the Enquiry Committee which would submit its report only after a detailed enquiry, after vacation of stay or disposal of the above writ petition, the respondents are not in a position to make any comment on the factual averments made by the petitioner in respect of the sexual harassment perpetrated by the 4th respondent against the Village Health Nurses.

6. During the pendency of the writ petition, the Feminist Association for Social Action, a Society registered under the Tamil Nadu Societies Registration Act, 1975, represented by its Secretary, V.Geetha, Coordinator, Tamizhaga Pengal Orunginaipu Iyakam and the Penn Urimai Iyakkam, a Society registered under the Societies Act, represented by its Secretary were impleaded as respondents 5 to 7 respectively.

7. Heard Mr. Vasudevan, learned counsel for the petitioner Association, Mr.M.Sekar, learned Special Government Pleader for respondents 1 to 3, Mr.S.Vijayakumar, learned counsel for the 4th respondent, Ms.D.Geetha, learned counsel for 6th respondent and Ms.Geetha Ramaseshan, learned counsel for the 7th respondent.

8. The relief sought for in the writ petition is to take appropriate action against the 4th respondent, Dr.P.Elangovan with regard to the sexual harassment in workplace in terms of the directions of the Supreme Court in Vishaka case. In the earlier paragraphs, we have already referred to several allegations/instances levelled against the 4th respondent, Dr.P.Elangovan. It is needless to say that if the same are substantiated by duly constituted Committee, necessary action would be taken by the competent

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authority. In such circumstances, it is not proper for this Court to give a finding as to the merit/genuineness of those allegations.

9. It is the stand of the first respondent/State Government that considering the representation by the petitioner-Association, the Government in G.O.(Rt.) No.1764, Health and Family Welfare Department dated 23.12.1997 constituted the Enquiry Committee with following persons as members to enquire into the alleged sexual harassment on the Village Health Nurses:

1. Tmt.Sheela Rani Chunkath, I.A.S.,
   Director of Reproductive Child Health
   and DANIDA and Commissioner of
   Maternity and Child Health … … Chairperson

2. Dr.Nageswari,
   Deputy Director of Medical
   Education(Schemes),
   Office of the Director of
   Medical Education. … … Member

3. Tmt.V.Sumathi Kumaraswamy,
   Professor, Government College
   of Nursing, Chennai Medical College,
   Chennai. … … Member.

4. Dr.Kausalya Devi,
   Trustee, Gandhigram Institute,
   Dindigul. … … Member
   (Non-Government Organisation)

10. In the same order, the Government also directed the Enquiry Committee to submit a report on the persons responsible for such harassment before the end of December, 1997. It is also explained in the counter affidavit that after the constitution of the Committee, the Village Health Nurses alleged to have been affected by the sexual harassment by the 4th respondent-Dr.P.Elangovan did not participate in the enquiry conducted on 8.1.1998, 9.1.1998 and 23.1.1998, but, according to the Government, they filed the above writ petition praying for direction to enquire into the matter in terms of the directions of the Supreme Court in Vishaka case. It is also the grievance of the Government that even when the Enquiry Committee was constituted in terms of the directions of the Supreme Court in Vishaka case, the petitioner filed an interim application in W.M.P.No.2287 of 1998 for stay of further proceedings under the G.O.(Rt.) No.1764, Health and Family Welfare Department dated 23.12.1997 and this Court, by order dated 11.2.1998, stayed all further proceedings under the Government Order. In those circumstances, according to the Government, the Committee is not in a

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position to continue the enquiry proceedings.

11. With regard to the constitution of the Committee as well as the stand of the Government in appointing four women members including one Dr.Kausalya Devi, Trustee of Gandhigram Institute, Dindigul, a non-governmental organization, being 4th member, Mr.Vasudevan, learned counsel for the petitioner submitted that except the 4th member, all others are Government officials and they are connected with Health Department wherein the 4th respondent, Dr.P.Elangovan is serving as a Medical Officer. As per the guidelines formulated by the Apex Court in Vishaka case, the Complaints Committee should be headed by a Woman and not less than half of its members should be women. Further, a third party either an NGO or other body who is familiar with the sexual harassment should also be nominated as one of members of the Committee. Mr.Sekar, learned Special Government Pleader has also brought to our notice that pursuant to the above judgment of the Supreme Court, the Chief Secretary to the Government instructed all Heads of Departments to constitute Complaints Committee, and he also placed before us copies of various orders/instructions issued. Though we accept the stand taken by the Government in constituting a Committee, unfortunately, the Committee is not in a position to enquire into the matter and submit its report in view of the stay of all further proceedings under the Government Order at the instance of the petitioner. In view of several details/particulars furnished in the affidavit, we are of the view that it is but proper to find out the truth in order to ameliorate the grievance expressed by the persons affected.

12. Mr.S.Vijayakumar, learned counsel for the 4th respondent submitted that in view of the fact that the 4th respondent was very strict in maintaining administration, certain allegations have been made against him and as on date, he is having only a short tenure in Government Service and prayed for dismissal of the writ petition. At the same time, as stated earlier, the complaints/allegations made against the 4th respondent, Dr.P.Elangovan cannot be taken lightly.

13. It is true that gender equality includes protection from sexual harassment and right to work with dignity, but, in a case involving charge of sexual harassment, the courts are required to examine the broader probabilities of the case and the Courts must examine the entire material to determine the genuineness of the complaint. This kind of cases are to be dealt with great sensitivity. Sympathy in favour of the superior officer is misplaced and at the same time, the statement of victim must be appreciated keeping in mind the entire gamut of the case.

14. It is true that the Committee was constituted by the Government to enquire into the matter and submit a report to the Head

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of the Department. Since nearly nine years have elapsed and in the absence of details about the availability of the very same persons, we are not inclined to permit the same Committee to proceed further with the matter. Instead, inasmuch as several affected Village Health Nurses represented their grievance to their immediate superiors and others either individually or through Association, we feel it proper to direct the Government to constitute a fresh Committee to enquire and find out the truth in order to determine the genuineness of the allegations made against the 4th respondent-Dr.P.Elangovan.

15. Accordingly, we issue the following directions:

(i) the first respondent/Government is to constitute a fresh Enquiry Committee on the basis of directions of the Supreme Court in Vishaka case to enquire into the allegations relating to sexual harassment of Village Health Nurses by the 4th respondent-Dr.P.Elangovan within a period of eight weeks from the date of receipt of copy of this order;

(ii) after the constitution of the Enquiry Committee, the same may be intimated to the petitioner Association as well as the persons who made complaints against the 4th respondent- Dr.P.Elangovan;

(iii) the Committee shall enquire and submit its report within a period of three months from the date of its constitution; and

(iv) it is made clear that if there is no proper response from the persons/complainants due to efflux of time, it is for the Committee to submit its views to the appropriate authority.

Accordingly, the writ petition is ordered with the above directions. No costs.

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Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

1.The Secretary
State of Tamilnadu
Department of Health & Family Welfare
Fort St. George, Chennai 600 009.

2.The Director of Public Health &
Preventive Medicine
DMS Complex, Teynampet
Chennai 600 006.

3.The Superintendent of Police
Tiruvarur District.

1 CC TO THE G.P, SR 1255

1 CC TO MR.S. VIJAYKUMAR, ADVOCATE SR 1183

1 CC TO MR.S.S. VASUDEVAN, ADVOCATE SR 1685

Order in W.P.18868/1997

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